

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-217687

DATE: August 22, 1985

MATTER OF: Fraudulent Travel Claim

DIGEST:

1. Agency denied an employee's claim for subsistence expenses, determining that he had misstated his motel expenses because the payments recorded on his receipts were higher than those entered into the motel records. We find that the agency's evidence is insufficient to establish fraud on the part of the employee, but that the employee has not sustained his burden of establishing the Government's liability for motel expenses at the higher rate shown on his receipts. Accordingly, the employee may be reimbursed only for those lodging payments which are documented in the motel records.
2. Agency denied an employee's claim for subsistence expenses, determining that he had submitted a false claim for private lodging expenses. We hold that the employee's claim for subsistence expenses during the period he resided in a private residence must be disallowed in its entirety, because the record shows that the employee knowingly furnished false information in support of his lodging claim.

An employee of the Federal Aviation Administration (FAA) appeals our Claims Group settlement disallowing him actual subsistence expenses based on its determination that his claim for lodging expenses was of doubtful validity. For the reasons stated below, we sustain our Claims Group settlement in part and reverse it in part.

GENERAL BACKGROUND

The subject employee is an Air Traffic Control Specialist permanently stationed in Leesburg, Virginia.

During the air traffic controllers' strike in 1981, he and a number of other controllers stationed in Leesburg were assigned to temporary duty at the New York Air Route Traffic Control Center in Islip, New York. The subject employee's detail in New York extended from August 23 to December 4, 1981.

For several days at the beginning of his assignment, the subject employee stayed in a motel and claimed lodging expenses of \$44 per day. Subsequently, he moved into a privately-owned house where he allegedly paid \$40 per day for the duration of his assignment. After the employee and other controllers submitted their vouchers for subsistence expenses, the FAA questioned the high amounts they had claimed for noncommercial lodgings. Consequently, the FAA launched an investigation into the travel expenses claimed by 12 controllers, including the subject employee.

Based on its investigation, discussed more fully below, the FAA determined that the subject employee had filed false claims for motel expenses and private lodging costs. Consequently, the agency determined that the employee was not entitled to retain subsistence expenses for any day of his temporary duty assignment, and it requested him to repay those expenses in the total amount of \$7,708.62.

The FAA also initiated disciplinary proceedings against the employee, proposing to remove him based on the following charges: (1) that he had submitted false motel receipts, with an intent to defraud the Government; (2) that he had submitted false receipts for private lodgings, with an intent to defraud the Government, and (3) that he had fraudulently claimed meal expenses for 5 or more nonworkdays on which he had returned to his official duty station. After withdrawing the allegation of fraudulent intent contained in the first two charges, and withdrawing the third charge in its entirety, the FAA suspended the employee for 5 days based on his submission of allegedly false receipts. The employee did not grieve this suspension.

The FAA forwarded the employee's claim for subsistence expenses to our Claims Group, posing the following questions: (1) whether all or part of the disallowed

subsistence expenses could be paid to the employee; (2) if so, whether his expenses for lodging in a private residence could be reduced to a reasonable monthly amount, based on "existing real estate market conditions;" and (3) whether the agency may disallow meal expenses for nonworkdays on which the employee traveled home, based on the average daily meal cost he incurred during the temporary duty assignment.

Our Claims Group answered the FAA's first question in the negative, finding that the employee's claim for lodging expenses was of doubtful validity. Consequently, our Claims Group did not reach the agency's additional questions.

The subject employee has appealed our Claims Group settlement, contending that we are bound by the FAA's decision to withdraw its allegation that he intended to defraud the Government. Alternatively, the employee maintains that the FAA has not presented evidence sufficient to establish that he fraudulently claimed motel expenses and noncommercial lodging costs.

DISCUSSION

At the outset, we note that the record does not contain an explanation of the FAA's decision to withdraw its allegation that the employee intended to defraud the Government by submitting false receipts. In any event, the FAA's decision not to pursue this allegation of fraud for disciplinary purposes does not mean that the Government must allow the employee's claim for subsistence expenses or refrain from taking recoupment action against him. Disciplinary proceedings involve evidentiary requirements which are more stringent than those involved in the settlement of suspected fraudulent claims, and, therefore, we are not bound by determinations made during the course of those proceedings.

This Office does not conduct hearings on allegedly fraudulent claims, but relies solely on evidence contained in the written record. See 4 C.F.R. § 31.7 (1985). In deciding whether the written record establishes fraud which will support either the denial of a claim or recoupment action in the case of a paid voucher, our Office has observed that:

"* * * the burden of establishing fraud rests upon the party alleging the same and must be proven by evidence sufficient to overcome the existing presumption in favor of honesty and fair dealing. Circumstantial evidence is competent for this purpose, provided it affords a clear inference of fraud and amounts to more than suspicion or conjecture. However, if, in any case, the circumstances are as consistent with honesty and fair dealing as with dishonesty, the inference of honesty is required to be drawn." Charles W. Hahn, B-187975, July 28, 1977.

Accordingly, we will apply the Hahn standard in evaluating the record before us.

Motel Expenses

As indicated previously, the employee claimed expenses for residing in a motel during the period August 23 to August 27. He paid the motel charges in cash, and submitted receipts showing payments of \$44 per day.

Agency investigators examined the motel's payment records and registration cards, and found that payments of \$35 per day were recorded for August 23 to August 25, that a payment of \$30 was recorded for August 26, and that there was no record of the employee's registration or payment on August 27. The investigators conducted interviews with two desk clerks and the motel manager, summarizing these interviews in the investigative report as follows. The first clerk acknowledged his initials on the employee's receipt for August 23, but stated that he did not believe he wrote in the amount of \$44. After reviewing the motel's record for August 23, the clerk stated that the employee paid \$35 for that day. The second clerk verified his initials on the employee's receipt for August 24, but stated that there was a discrepancy between the \$44 amount written on that receipt and the \$35 payment entered into the motel's record. The motel manager stated that he did not write the employee's receipt dated August 25; that he did give the employee a receipt in the amount of \$44 for August 26, although the

record for that day shows a payment of \$30; and that the clerk whose initials appear on the employee's receipt for August 27 is no longer employed by the motel.

The employee states that he wrote his name on the receipts dated August 23 and 25, but denies that he filled in any other information. He maintains that an inference of fraud cannot be drawn from the discrepancy between the amounts shown on his receipts and the lesser amounts entered into the motel's records, because the records are handwritten and subject to manipulation by the motel staff. The employee adds that the motel engaged in unusual practices during his stay, requiring him to check out each morning and reregister at night. He explains that he stayed in the motel based on FAA management's advice that the detailed controllers secure remote lodgings in order to avoid confrontations with the striking controllers.

Considering the record as a whole, we believe that the FAA's evidence is insufficient to establish a clear inference of fraud on the part of the employee. The unsophisticated motel records submitted for our review contain numerous inconsistencies, and, therefore, we decline to infer fraud from discrepancies between those records and the employee's receipts. Furthermore, we note that although the motel clerks and manager interviewed by FAA pointed to discrepancies between the records and the employee's receipts, they acknowledged their initials on a majority of the receipts and did not specifically deny that they filled in the \$44 figures. In fact, the motel manager confirmed that he gave the employee a receipt for \$44 on August 26, even though the motel records for that day reflect a payment of \$30.

However, even in the absence of specific proof of wrongdoing on the part of an employee, we have held that the employee must produce evidence which satisfactorily establishes the Government's liability for his expenses. See Raymond Eluhow, B-198438, March 2, 1983, citing 4 C.F.R. § 31.7. In this case, we find that the employee has not convincingly demonstrated that he is entitled to reimbursement for motel expenses at the rate of \$44 per day. Since the employee paid the motel charges in cash, the record does not contain any canceled checks or credit card receipts which would document the claimed payments.

Furthermore, the motel's payment records and registration cards show that the motel received payments of \$35 per day for the period August 23 to August 25, a payment of \$30 for August 26, and no payment for August 27.

Since the motel records for August 27 contain no evidence of the employees's registration or payment, he may not recover any lodging expenses claimed for that day. However, the employee may be reimbursed for lodging expenses of \$35 per day for the period August 23 to August 25, and \$30 for August 26, since, at a minimum, he paid the amounts stated in the motel records. See Eluhow, cited above. Additionally, he may recover meal costs and miscellaneous subsistence expenses claimed for the period August 23 to August 27, provided the FAA determines that the claimed expenses are proper.

Private Lodging Expenses

The employee stayed in a privately-owned house during the period August 28 to December 4, 1981, and submitted signed receipts showing that he paid rent at the rate of \$40 per day. He certified on his travel voucher and later prepared a sworn statement that he had stayed at the address and paid the individual identified on his receipts.

The FAA's investigators attempted to verify the employee's receipts for private lodgings, and learned that the payee's name and address were fictitious. The agency ascertained that the employee actually had shared a private residence with two other controllers, and the investigators interviewed the landlady concerning the rental arrangement. Although the landlady declined to prepare a sworn statement, she explained the situation as follows. At the request of one of the controllers, the landlady agreed to rent out a portion of her house at the rate of \$40 per day^{1/}, regardless of the number of occupants, and to furnish only one receipt. The subject employee and another controller

^{1/} In the same interview, the landlady stated that the rental fee was \$44 per day.

staying at the house requested separate receipts, and, after the landlady declined to furnish them, suggested that she provide receipts in the names of friends or relatives. The landlady stated that she supplied the controllers with two fictitious names and addresses, but denied that she prepared the receipts.

After the FAA completed its investigation, the employee prepared a sworn statement admitting that he had provided the FAA with false information concerning the address of his lodgings and the name of the individual who had provided them. However, the employee stated that the landlady furnished the receipts with the explanation that they were signed by her sisters so that she could avoid tax liability for the rental income. The employee submitted the landlady's sworn statement that she had prepared the receipts, and that the employees were not aware that she had falsified the names and addresses.

In view of the inconsistencies in the landlady's statements, we believe that these statements are insufficient in themselves to either prove or disprove fraud on the part of the employee. However, we note that the employee knowingly provided false information concerning his private lodgings on his travel voucher and in a sworn statement. Claims for travel expenses must be based on true facts, and it is incumbent upon the claimant to furnish evidence satisfactorily establishing the liability of the Government. See B-211220, September 27, 1983. Since the employee claimed private lodging expenses based on false information, we hold that his entire claim for the period August 28 to December 4, 1981, is of doubtful validity. Accordingly, the employee may not recover subsistence expenses for any day during that period. See B-196364, January 6, 1981.

Nonworkday Travel

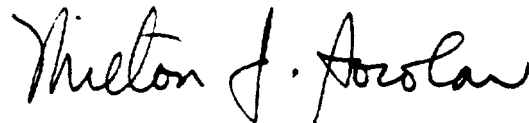
During the air traffic controllers' strike, commercial airlines offered controllers temporarily stationed in New York round-trip travel to their homes, without charge to the Government or the employees. The FAA believes that the subject employee used this service to travel home on 5 or more nonworkdays, but states that it has been unable to identify the exact dates of his trips. Consequently, the agency questions whether it may disallow meal expenses for the trips based on the average daily meal cost the employee claimed during his assignment.

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We need not address the FAA's question since we have already determined that the employee must be denied subsistence expenses, including meal costs, for all but 5 days during the period August 23 to December 4, 1981. Of course, if the agency can establish that the employee traveled home on one or more of the 5 untainted days, it would be required to disallow his meal costs pursuant to paras. 1-8.4f and 1-7.6a of the Federal Travel Regulations, incorp. by ref., 41 C.F.R. § 101-7.003 (1984). Under those regulations, a traveler who voluntarily returns home on nonworkdays may be reimbursed only for his transportation costs and subsistence expenses en route, and not for subsistence expenses incurred at his official duty station or residence from which he commutes daily to that station. See generally B-176706, October 13, 1972.

CONCLUSION

The employee's claim for subsistence expenses during the period August 23 to August 27, 1981, should be settled in accordance with the foregoing. He may not recover any subsistence expenses incurred between August 28 and December 4, 1981.



Acting Comptroller General
of the United States